

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

RICHARD FITCHITT,

Appellant.

No. 38963-1-II

UNPUBLISHED OPINION

Hunt, J. — Richard Fitchitt appeals a Mason County Superior Court order denying his motion for indigency. Fitchitt was convicted of a felony and sought a finding that he was indigent for appeal purposes. The trial court denied his motion because Fitchitt’s net income was above the cutoff amount established in RCW 10.101.010(1). He contends that the trial court improperly failed to consider other statutory criteria. We agree.

RCW 10.101.010(1) provides:

(1) “Indigent” means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans’ benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

The trial court addressed only subsection 010(1)(c), the net income criterion, and no other provisions of this statute.

The State argues that because the statutory provisions are in the disjunctive, the trial court

was not required to consider more than one criterion. That is incorrect. Because the statutory criteria are in the disjunctive, Fitchitt is indigent if any one of them applies. Thus, the trial court should have considered all of the criteria for establishing indigency under RCW 10.101.010(1).

Accordingly, we reverse the trial court's denial of Fitchitt's motion to establish indigency, remand to the trial court to reconsider his motion in light of all the indigency criteria of RCW 10.101.010(1), and to enter findings about whether Fitchitt meets any one of these statutory criteria as required under RAP 15.2(b).

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Hunt, J.

We concur:

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Houghton, P.J.

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Quinn-Brintnall, J.